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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,812	03/10/2004	Stephen J. Plzak	DRDC-001	7487

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EXAMINER
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OLSON, MARGARET LINNEA

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,812	<b>Applicant(s)</b> PLZAK, STEPHEN J.	
	<b>Examiner</b> Margaret L. Olson	<b>Art Unit</b> 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.  
4a) Of the above claim(s) 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 26-28 is/are rejected.
- 7) ☒ Claim(s) 23-25 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/10/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                     |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                         | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/25/2004</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-28, drawn to a rooftop carrier, classified in class 224, subclass 309.
  - II. Claim 29, drawn to a method of securing boating gear, classified in class 414, subclass 137.1.
2. Inventions of a "roof-top carrier" and "a method of securing boating gear" are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process for securing boating gear as described can be practiced with another materially different product, since it entails using a strap with two rings to affix the boat to a roof-top carrier with no mention of any distinguishing characteristics of the roof-top carrier disclosed in the application. The burden of searching these two distinct inventions is significant, since the search required for securing boating gear on any carrier would be much broader than the search required for components of a rooftop carrier.

3. During a telephone conversation with Arthur Jackson on September 21<sup>st</sup>, 2006, a provisional election was made with traverse to prosecute the invention of the rooftop carrier, claims 1-28. Affirmation of this election must be made by applicant in replying to this Office action. Claim 29 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

4. The disclosure is objected to because of the following informalities: in the 9<sup>th</sup> line of the 21<sup>st</sup> paragraph, the word "at" is in bold and underlined for no apparent purpose.

Appropriate correction is required.

5. The disclosure is objected to because of the following informalities: in the second line of paragraph 22, the phrase "an centering strap" should be "a centering strap".

Appropriate correction is required.

6. The disclosure is objected to because of the following informalities: in the third line of the 28<sup>th</sup> paragraph, the last two digits of 530 are underlined for no apparent reason.

Appropriate correction is required.

7. The disclosure is objected to because of the following informalities: in paragraph 29's definition of 'buckle', "on strap end" should be "one strap end".

Appropriate correction is required.

***Claim Objections***

8. Claim 26 is objected to because of the following informalities: the phrase "a portion of a pole of a rod and reel" appears to contain a typo. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 2, 3, 5, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "if not already present" renders each claim indefinite since it is not clear if the phrase refers back to prior claims or alternate apparatus structure. Since it is surrounded by parenthesis, it is also not clear to what extent the phrase modifies the claim language.

***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent

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granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 1, 2, 4, 6, 10, 11, 12, 13, 14, 19, and 20 are rejected under 35

U.S.C. 102(b) as being anticipated by Gradek et al. (US 4,326,655). Gradek et al.

disclose a rooftop carrier 10 with a resilient support pad 16 (column 5, lines 50-53) with a bottom 18 adapted to rest on a roof and a top 19 (figure 1). A support member 28 extends through a long axis of the bottom of the support pad in a channel 27 and holds the support pad onto the roof with support-retaining strap gear 30 and 34.

With respect to claim 2, the upper portion of strap 28 is the load-retaining strap gear and has a buckle 44 that is capable of adjusting the length of the load retaining strap (figure 1).

With respect to claim 4, there are two rings situated at each end of the support pad. On one end, ring 30 (figure 7) attaches to strap 28, and on the other end, ring 36 (figure 8) is contained by straps 28 and 37 (column 6, lines 42-52).

With respect to claim 6, the support retaining strap gear 34 is secured to the strap 28 by two strap segments 28 and 37 sewn together (column 6, lines 45-52).

With respect to claim 10, the support retaining strap gear has a first strap 28 consisting of a lower section which engages the support pad through channel 27 and an upper adjustable section with two buckles 34 and 44 (figure 1) which can be used to position the strap by drawing the ends through the buckle closure elements 38 and 39 (column 6, lines 52-56; column 7, lines 19-21).

With respect to claim 11, the support-retaining strap gear 30 is shown as attached to the roof, and as such is situated less than 5 cm from the roof.

With respect to claim 12, the support-retaining strap gear 30 is shown as attached to the roof, and as such is situated less than 3 cm from the roof.

With respect to claim 13, the support-retaining strap gear 30 is shown as attached to the roof, and as such is situated less than 1 cm from the roof.

With respect to claim 14, the support retaining strap gear 30 is shown as attached to the roof, which is less than  $\frac{1}{3}$  of the distance from the top of the carrier to the bottom, at the height of the roof.

With respect to claim 19, the support pad 16 has multiple slots 20 for engaging gear on top of the carrier (figure 1; column 5, lines 59-63).

With respect to claim 20, the gear slots 20 are designed to grip a narrow dimension of ski positioned base-to-base (figure 1; column 6, lines 19-25).

13. Claims 1, 19, 20, 21, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Johnston et al. (US 2004/0211800). Johnston et al. disclose a rooftop carrier with a resilient support pad 10 (paragraph 26, lines 5-7) with a bottom 32 adapted to rest on the roof (paragraph 32), and a top. A support member 16' extends across the long axis of the bottom of the support pad through channel 30 and retains the support pad to the roof along with strap retaining gear (paragraph 27).

With respect to claim 19, the carrier has slots 24 for engaging gear to be carried on top (paragraph 29).

With respect to claim 20, the slots 24 include a cavity 26 that is adapted to engage a narrow dimension of two skis (paragraph 29, lines 6-9; figure 6).

With respect to claim 21, the gear-engaging slots 24 have two concave slots, one on each side of cavity 26, that will position ski poles in the gear engaging slots (figure 6).

With respect to claim 22, the gear-engaging slots and cavities 26 position a pair of skis and ski poles below the top of the carrier 22 so that there is room on top of the support pad to position one or more snow boards.

### ***Claim Rejections - 35 USC § 103***

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 7, 8, 9, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655). Gradek et al. disclose ring pieces 36 that engage load-retaining strap gear 34 retained by bar 35 sewn between strap segments 28 and 37 at one end of the support pad (figure 1). They do not disclose these pieces being on both sides of the support pad. It would have been obvious to one of ordinary skill in the art at the time of invention to include this strapping gear on both



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sides of the support pad in order to give the load-retaining strap 28 maximum adjustability.

With respect to claim 8, the support-retaining strap gear 34 is retained to the support pad by the support member section of strap 28 as retained to 34 with strap 37.

With respect to claim 9, Gradek et al. disclose the rings as held on top of the load retaining strap gear by the strap segments 28 and 37, the support pad 16, and the support members 28 (figure 1).

With respect to claim 15, support member 28 is a strap that goes through a conduit 27 in the support pad, and then straps around the support pad 16 to prevent a shift in positioning of the support members. Gradek et al. do not disclose more than one support member per support pad. It would have been obvious to one of ordinary skill in the art at the time of invention to include more than one support member secured through and strapped around a support pad for a rooftop carrier, in order to have more straps for engaging and securing cargo on top of the carrier.

16. Claims 3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655) as applied to claim 1 above, and further in view of Frost (US 3,884,404). Gradek et al. does not disclose two load-retaining straps with loops that engage the support retaining straps. Frost teaches a rooftop carrier with a resilient support pad 11 and two load-retaining support straps 19 and 9a. The load retaining support straps 19 and 19a have loops 21 so that they may be secured to other straps on the support pad. These loops are also capable of securing the straps 19 and 19a to any of the support-retaining straps located over the support pad, such as strap 28 in

Gradek's rooftop carrier. It would have been obvious to one of ordinary skill in the art at the time of invention to include two load-retaining support straps that are able to secure to support-retaining straps in order to more securely fasten the load to the rooftop carrier than one strap alone.

With respect to claim 5, Gradek et al. discloses the rooftop carrier of claim 4 as described in paragraph 8 above, but does not disclose load retaining strap gear with clips for engaging the rings 30 and 36. Frost teaches two straps 19 and 19a with clips 21 that are capable of engaging rings attached to the rooftop carrier (column2, lines 36-40).

17. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655) as applied to claim 1 above, and further in view of MacNeil (US 6,318,612). Gradek et al. disclose the load-retaining strap gear buckle 34. They do not disclose that the buckle is made substantially of plastic. MacNeil teaches a rooftop carrier with a strap 22 and a buckle 84 made of plastic (figure 4; column 2, lines 14-20). It would have been obvious to one of ordinary skill in the art at the time of invention to use a plastic buckle to releasably and adjustably secure support retaining strap gear on a rooftop carrier as an inexpensive and durable type of buckle.

With respect to claim 17, Gradek et al. disclose the support-retaining strap gear buckle 44. They do not disclose that the buckle is made substantially of plastic. MacNeil teaches a rooftop carrier with a strap 22 and a buckle 84 made of plastic (figure 4; column 2, lines 14-20). It would have been obvious to one of ordinary skill in the art at the time of invention to use a plastic buckle to releasably and adjustably secure

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support retaining strap gear on a rooftop carrier as an inexpensive and durable type of buckle.

18. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655) as applied to claim 1 above, and further in view of Chasan (US 5,769,291). Gradek does not disclose a support pad with a slot to engage a bar of a roof rack. Chasan teaches a support pad for a rooftop carrier with a support pad 12 that fits on top of a rooftop 32 and surrounds a roof rack bar 16 in a long slot (figure 2, note that roof rack bar 16 is situated under pad 18 and shown with diagonal stripes). It would have been obvious to one of ordinary skill in the art at the time of invention to include a support pad on a roof rack with crossbars in order to prevent the bars from vibrating (Chasan; column 1, lines 53-56) and at the same time cushion cargo placed on the bars.

19. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al (US 4,326,655) as applied to claims 1 and 20 in paragraph 8 above, and further in view of Sazegar (US 4,278,192). Gradek et al. disclose gear-engaging slots for ski equipment, but they do not disclose two channels adapted to fit ski poles. Sazegar teaches a rooftop carrier for ski pole with gear-engaging slots for ski equipment and two channels 61 for engaging ski poles (column 3, lines 36-39). It would have been obvious to one of ordinary skill in the art at the time of invention to include channels for ski poles in gear-engaging slots for ski equipment in order that the poles do not interfere with each other or the skis during transport.

20. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655) as applied to claims 1 and 19 in paragraph 8 above, and further in view of Washington (US 4,523,704). Gradek et al. do not disclose gear-engaging slots specifically adapted to hold a reel of a fishing rod. Washington teaches a rooftop carrier with a support carrier 10 with pad 50 and gear-engaging slot specifically designed to hold a fishing reel and portion of a fishing pole or rod (figure 1; column 3, lines 11-17).

21. Claims 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gradek et al. (US 4,326,655) as applied to claims 1 and 19 in paragraph 8 above, and further in view of Martino (US 4,402,442). Gradek et al. do not disclose a horizontal slot in the rooftop carrier. Martino teaches a rooftop carrier with a support structure 14 made of two resilient blocks 16 and connected by an elastic cord 18 (figure 2). A horizontal slot formed of grooves 24 in the blocks is configured to hold a surfboard, sailboard, or another similarly shaped object 36 (column 3, lines 7-12). It would have been obvious to one of ordinary skill in the art at the time of invention to include a horizontal slot in a rooftop carrier support pad for holding an elongated board in order to hold it above the level of the car roof and keep the board from scratching the roof of the car during transport (column 1, lines 57-64).

With respect to claim 28, Martino teaches that the horizontal slot is interior to the support pad (figure 2) and is accessible by a lateral slot in the support with edges 22 (figure 2). This slot can be secured in a closed fashion with load-retaining strap gear 42 (figure 1; column 3, lines 17-25). It would have been obvious to one of ordinary skill in the art at the time of invention to include a horizontal slot interior to a support pad to

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protect the cargo carried in the slot on all sides, and to make this slot easily accessible by another slot that can be secured in a closed fashion in order to make the carrier easy to load and easy to secure.

***Allowable Subject Matter***

22. Claims 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jensen (US 2,578,067), Bambenek et al. (US 2,315,387), Rivenbark (US 6,003,748), and Coleman (US 5,067,644) disclose similar inventions.

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER

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